IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6123 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HARISH FATEHSINH GOHEL

Versus

DY. ENGINEER (CONSTRUCTION)

Appearance:

1. Special Civil Application No. 6123 of 1994

MR NILESH A PANDYA for Petitioner No. 1

Mr. M.G. Doshit for M/S MG DOSHIT & CO for Respondent No. 1-2

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Pandya for the petitioner and Mr. M.G. Doshit for the respondent Board. By way of this petition, the petitioner has challenged the termination order passed by the respondent on 18th

March, 1994 against which departmental appeal is available to the petitioner. However, without exhausting such remedy of appeal before the appellate authority, the petitioner has directly approached this court by way of this petition.

Therefore, in view of these facts, it is directed to the petitioner to file appeal against the order of termination dated 18th March, 1994 before the appellate authority of the respondent board. As and when such appeal filed by the petitioner is received by the first appellate authority of the respondent board, it is directed to the first appellate authority of the respondent board to entertain such appeal on merits without raising objection of delay in filing of such appeal because the matter has remained pending before this court since 1994. Learned advocate Mr. Pandya appearing for the petitioner has submitted under the instructions from his client that the petitioner is not claiming any back wages if his case for reinstatement is considered by the respondent board. He has further pointed out that the incident dated 14th January, 1994 has been taken into account while terminating the services of the petitioner by order dated 18th March, 1994 and the complainants now have given in writing that they do not have grievance against the petitioner. This letter has been placed on record by the petitioner. However, according to this Court's opinion, all these aspects are required to be considered and examined by the first appellate authority of the respondent board since this Court is passing these orders without entering into the merits of the matter.

Accordingly, without entering into the merits of the matter, it is directed to the petitioner to file appeal before the appellate authority within one month from the date of receipt of copy of this order. As and when such appeal filed by the petitioner is received by the appellate authority, it is directed to the appellate authority to consider the appeal of the petitioner without raising any objection about delay and limitation while keeping in view the pendency of this petition before this Court and to decide such appeal on merits and in accordance with law after giving reasonable opportunity to the petitioner and to pass appropriate order in accordance with law within two months from the date of receipt of copy of this order. With these observations and directions, this petition is disposed of. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.

23.4.2002. (H.K. Rathod,J.)